

AMENDED IN SENATE AUGUST 3, 1998

AMENDED IN SENATE JUNE 15, 1998

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2275**

**Introduced by Assembly Member Kuykendall**  
(Coauthor: Senator Kopp)

February 19, 1998

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An act to add Chapter 4.5 (commencing with Section 927) to Part 3 of Division 3.6 of Title 1 of, and to repeal Sections 926.15, 926.17, and 926.18 of, the Government Code, relating to state contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 2275, as amended, Kuykendall. State contracts: claims against the state.

Existing law provides that a state agency that fails to make any payment for goods and services to certain entities pursuant to a contract shall be subject to an interest penalty fee, according to specified criteria.

This bill would recast these provisions and specify that these provisions may not be waived, altered, or limited by the state agency with respect to a contract entered into on or after January 1, 1999, or by the person or business contracting on or after that date with the state agency.

This bill would require that in order to avoid late payment penalties, state agencies shall pay promptly submitted,

undisputed invoices within 45 days, and would specify procedures and exclusions relating to that requirement.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 926.15 of the Government Code,  
2 as added by Section 1 of Chapter 360 of the Statutes of  
3 1997, is repealed.

4 SEC. 2. Section 926.15 of the Government Code, as  
5 amended by Section 2 of Chapter 360 of the Statutes of  
6 1997, is repealed.

7 SEC. 3. Section 926.17 of the Government Code is  
8 repealed.

9 SEC. 4. Section 926.18 of the Government Code is  
10 repealed.

11 SEC. 5. Chapter 4.5 (commencing with Section 927)  
12 is added to Part 3 of Division 3.6 of Title 1 of the  
13 Government Code, to read:

14

15 CHAPTER 4.5. PROMPT PAYMENT OF CLAIMS

16

17 927. (a) This chapter shall be known and may be  
18 cited as the California Prompt Payment Act.

19 (b) It is the intent of the Legislature that state  
20 agencies pay properly submitted, undisputed invoices  
21 within 45 days of receipt, or automatically calculate and  
22 pay the appropriate late payment penalties as specified  
23 in this chapter.

24 (c) Notwithstanding any other provision of law, this  
25 chapter shall apply to all state agencies, including, but not  
26 limited to, the Public Employees' Retirement System, the  
27 State Teachers' Retirement System, the Treasurer, and  
28 the Department of General Services.

29 927.1. (a) A state agency that acquires property or  
30 services pursuant to a contract with a business, including  
31 any approved change order or contract amendment, shall  
32 make payment to the person or business on the date



1 required by the contract or be subject to a late payment  
2 penalty.

3 (b) Except in the event of an emergency as provided  
4 in Section 927.11, effective January 1, 1999, the late  
5 payment penalties specified in this chapter may not be  
6 waived, altered, or limited by a state agency acquiring  
7 property or services pursuant to a contract or by any  
8 person or business contracting with a state agency to  
9 provide property or services.

10 927.2. The following definitions apply to this chapter:

11 (a) "Claim schedule" means a schedule of invoices  
12 prepared and submitted by a state agency to the  
13 Controller for payment to the named claimant.

14 (b) "Invoice" means a bill or claim that requests  
15 payment on a contract under which a state agency  
16 acquires property or services.

17 (c) "Medi-Cal program" means the program  
18 established pursuant to Chapter 7 (commencing with  
19 Section 14000) of Part 3 of Division 9 of the Welfare and  
20 Institutions Code.

21 (d) "Nonprofit public benefit corporation" means a  
22 corporation, as defined by subdivision (b) of Section 5046  
23 of the Corporations Code, that has registered with the  
24 Department of General Services as a small business.

25 (e) "Reasonable cause" means a determination by a  
26 state agency that any of the following conditions are  
27 present:

28 (1) There is a discrepancy between the invoice or  
29 claimed amount and the provisions of the contract.

30 (2) There is a discrepancy between the invoice or  
31 claimed amount and either the contractor's actual  
32 delivery of property or services to the state or the state's  
33 acceptance of those deliveries.

34 (3) Additional evidence supporting the validity of the  
35 invoice or claimed amount is required to be provided to  
36 the state agency by the contractor.

37 (4) The invoice has been improperly executed or  
38 needs to be corrected by the contractor.

39 (f) "Required payment approval date" means the date  
40 on which payment is due as specified in a contract or, if

1 a specific date is not established by the contract, 30  
2 calendar days following the date upon which an  
3 undisputed invoice is received by a state agency.

4 (g) “Received by a state agency” means the date an  
5 invoice is delivered to the state location or party specified  
6 in the contract or, if a state location or party is not  
7 specified in the contract, wherever otherwise specified  
8 by the state agency.

9 (h) “Revolving fund” means a fund established  
10 pursuant to Article 5 (commencing with Section 16400)  
11 of Division 4 of Title 2.

12 (i) “Small business” means a business certified as a  
13 “small business” in accordance with subdivision (c) of  
14 Section 14837.

15 (j) “Small business” and “nonprofit organization”  
16 mean, in reference to providers under the Medi-Cal  
17 program, a business or organization that meets all of the  
18 following criteria:

19 (1) The principal office is located in California.

20 (2) The officers, if any, are domiciled in California.

21 (3) If a small business, it is independently owned and  
22 operated.

23 (4) The business or organization is not dominant in its  
24 field of operation.

25 (5) Together with any affiliates, the business or  
26 organization has gross receipts from business operations  
27 that do not exceed three million dollars (\$3,000,000) per  
28 year, except that the Director of Health Services may  
29 increase this amount if the director deems that this action  
30 would be in furtherance of the intent of this chapter.

31 927.3. Except where payment is made directly by a  
32 state agency pursuant to Section 927.6, any undisputed  
33 invoice received by a state agency shall be submitted to  
34 the Controller for payment by the required payment  
35 approval date. A state agency may dispute an invoice  
36 submitted by a contractor for reasonable cause if the state  
37 agency notifies the contractor within 15 working days  
38 from receipt of the invoice, or delivery of the property or  
39 services, whichever is later. No state employee shall  
40 dispute an invoice, on the basis of minor or technical

1 defects, in order to circumvent or avoid the general  
2 intent or any of the specific provisions of this chapter.

3 927.4. Except as otherwise provided in this chapter, to  
4 avoid late payment penalties, the maximum time from  
5 state agency receipt of an undisputed invoice to issuance  
6 of a warrant for payment is 45 calendar days, including  
7 not more than 30 calendar days from the state agency to  
8 submit a correct claim schedule to the Controller, and not  
9 more than 15 calendar days for the Controller to issue the  
10 warrant.

11 927.5. This chapter shall not apply to claims for  
12 reimbursement for health care services provided under  
13 the Medi-Cal program, unless the Medi-Cal health care  
14 services provider is a small business or nonprofit  
15 organization. In applying this section to claims submitted  
16 to the state, or its fiscal intermediary, by providers of  
17 services or equipment under the Medi-Cal program,  
18 payment for claims shall be due 30 days after a claim is  
19 received by the state or its fiscal intermediary, unless  
20 reasonable cause for nonpayment exists. With regard to  
21 Medi-Cal claims, reasonable cause shall include review of  
22 claims to determine medical necessity, review of claims  
23 for providers subject to special prepayment fraud and  
24 abuse controls, and claims that require review by the  
25 fiscal intermediary or State Department of Health  
26 Services due to special circumstances. Claims requiring  
27 special review as specified above shall not be eligible for  
28 a late payment penalty.

29 927.6. (a) State agencies shall pay applicable  
30 penalties, without requiring that the contractor submit  
31 an additional invoice for these amounts, whenever the  
32 state agency fails to submit a correct claim schedule to the  
33 Controller by the required payment approval date. The  
34 penalty shall cease to accrue on the date the state agency  
35 submits the claim schedule to the Controller for payment,  
36 and shall be paid for out of the state agency's funds. If the  
37 contractor is a certified small business, a nonprofit  
38 organization, a nonprofit public benefit corporation, or a  
39 small business or nonprofit organization that provides  
40 services or equipment under the Medi-Cal program, the

1 state agency shall pay to the contractor a penalty of 0.25  
2 percent of the amount due, per calendar day, from the  
3 required payment date. However, a nonprofit  
4 organization shall only be eligible to receive a penalty  
5 payment if it has been awarded a contract in an amount  
6 less than five hundred thousand dollars (\$500,000).

7 (b) For all other businesses, the state agency shall pay  
8 a penalty at a rate of 1 percent above the rate accrued on  
9 June 30 of the prior year by the Pooled Money Investment  
10 Account, not to exceed a rate of 15 percent, except that,  
11 if the amount of the penalty is seventy-five dollars (\$75)  
12 or less, the penalty shall be waived and not paid by the  
13 state agency. On an exception basis, state agencies may  
14 avoid payment of penalties, for failure to submit a correct  
15 claim schedule to the Controller by the required  
16 payment approval date, by paying the contractor  
17 directly, from the state agency's revolving fund within 45  
18 calendar days following the date upon which an  
19 undisputed invoice is received by the state agency.

20 927.7. The Controller shall pay contractors within 15  
21 calendar days of receipt of a correct claim schedule from  
22 the state agency. If the Controller fails to make payment  
23 within 15 calendar days of receipt of the claim schedule  
24 from a state agency, the Controller shall pay applicable  
25 penalties to the contractor without requiring that the  
26 contractor submit an invoice for these amounts. Penalties  
27 shall cease to accrue on the date full payment is made, and  
28 shall be paid for out of the Controller's funds. If the  
29 contractor is a certified small business, a nonprofit  
30 organization, a nonprofit public benefit corporation, or a  
31 small business or nonprofit organization that provides  
32 services or equipment under the Medi-Cal program, the  
33 Controller shall pay to the contractor a penalty of 0.25  
34 percent of the amount due, per calendar day, from the  
35 16th calendar day following receipt of the claim schedule  
36 from the state agency. However, a nonprofit organization  
37 shall only be eligible to receive a penalty payment if it has  
38 been awarded a contract in an amount less than five  
39 hundred thousand dollars (\$500,000). For all other  
40 businesses, the Controller shall pay penalties at a rate of

1 1 percent above the rate accrued on June 30 of the prior  
2 year by the Pooled Money Investment Account, not to  
3 exceed a rate of 15 percent, except that, if the amount of  
4 the penalty is seventy-five dollars (\$75) or less, the  
5 penalty shall be waived and not paid by the Controller.

6 927.8. State agencies shall avoid seeking any  
7 additional appropriation to pay penalties that accrue as a  
8 result of the agency's failure to make timely payments as  
9 required by this chapter. Any state agency that requests  
10 that the Legislature make a deficiency appropriation for  
11 the agency shall identify what portion, if any, of the  
12 requested amount is required because of any penalties  
13 imposed by this chapter.

14 927.9. (a) On an annual basis, within 90 calendar days  
15 following the end of each fiscal year, state agencies shall  
16 provide the Director of General Services with a report on  
17 late payment penalties that were paid by the state agency  
18 in accordance with this chapter during the preceding  
19 fiscal year.

20 (b) At a minimum, the report shall identify the total  
21 number and dollar amount of late payment penalties  
22 paid. State agencies may, at their own initiative, provide  
23 the director with other relevant performance measures.  
24 The director shall prepare a report listing the number  
25 and total dollar amount of all late payment penalties paid  
26 by each state agency during the preceding fiscal year,  
27 together with other relevant performance measures, and  
28 shall make the information available to the public.

29 927.10. State agencies shall encourage contractors to  
30 promptly pay their subcontractors and suppliers,  
31 especially those that are small businesses. In furtherance  
32 of this policy, state agencies shall utilize expedited  
33 payment processes to enable faster payment by prime  
34 contractors to their subcontractors and suppliers, and  
35 shall promptly respond to any subcontractor or supplier  
36 inquiries regarding the status of payments made to prime  
37 contractors.

38 927.11. (a) Except in the case of a contract with a  
39 certified small business, a nonprofit organization or a  
40 nonprofit public benefit corporation, if an invoice from a

1 business under a contract with the Department of  
2 Forestry and Fire Protection would become subject to  
3 late payment penalties during the annually declared fire  
4 season, as declared by the Director of Forestry and Fire  
5 Protection, then the required payment approval date  
6 shall be extended by 30 calendar days.

7 (b) No nonprofit public benefit corporation shall be  
8 eligible for a late payment penalty if a state agency fails  
9 to make timely payment because no Budget Act has been  
10 enacted.

11 (c) If the Director of Finance determines that a state  
12 agency or the Controller is unable to promptly pay an  
13 invoice as provided for by this chapter due to a major  
14 calamity, disaster, or criminal act, then otherwise  
15 applicable late payment penalty provisions contained in  
16 Section 927.7 shall be suspended except as they apply to  
17 a contractor which is either a certified small business, a  
18 nonprofit organization, a nonprofit public benefit  
19 corporation, or a small business or nonprofit organization  
20 that provides services or equipment under the Medi-Cal  
21 program. The suspension shall remain in effect until the  
22 Director of Finance determines that the suspended late  
23 payment penalty provisions of this section should be  
24 reinstated.

25 (d) *Except as provided in subdivision (b), in the event*  
26 *a state agency fails to make timely payment because no*  
27 *Budget Act has been enacted, penalties shall continue to*  
28 *accrue until the time that the invoice is paid.*

29 927.12. Section 926.10 shall not apply to any contract  
30 covered by this chapter.

